

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States of America,)	
)	
Plaintiff,)	
)	
v.)	Civil No.
)	
One Gray 2011 Ford Explorer, MA Reg. 16F810,)	JURY TRIAL REQUESTED
VIN 1FMHK8D89BGA13556, registered to)	
Frastichelys Rodriguez,)	
)	
Defendant <i>in rem</i> .)	
)	

**VERIFIED COMPLAINT FOR FORFEITURE *IN REM*,
FOR PROPERTY WITHIN THE UNITED STATES' POSSESSION, CUSTODY
OR CONTROL PURSUANT TO SUPPLEMENTAL RULE G**

Plaintiff, United States of America, brings this Complaint in accord with Supplemental Rule G(2) of the Supplemental Rules for Certain Admiralty and Maritime Claims and Asset Forfeiture Actions, and alleges as follows:

NATURE OF THE ACTION

This is an action to forfeit and condemn to the use and benefit of the United States of America the captioned defendant *in rem*, for violations of 21 U.S.C. § 881(a)(4).

JURISDICTION AND VENUE

The Court has jurisdiction over this action pursuant to 21 U.S.C. §§ 1345 and 1355. Venue is proper in this district pursuant to 28 U.S.C. §§ 1395 and 1355(b)(1).

THE DEFENDANT *IN REM*

The defendant *in rem* is One Gray 2011 Ford Explorer, MA Reg. 16F810, VIN 1FMHK8D89BGA13556, registered to Frastichelys Rodriguez. It is currently in the custody of the United States Drug Enforcement Administration.

FACTS

1. On December 18, 2018, a New Hampshire State Police trooper was patrolling near Windham, New Hampshire when he pulled over the defendant *in rem*, a 2011 Ford Explorer sport utility vehicle, because its rear license plate lights were not working. The driver of the Explorer, Fidel Pereyra, a resident of Lawrence, Massachusetts, told the trooper he was traveling to a McDonald's restaurant in Windham. While speaking to Pereyra, the trooper noticed an Arizona iced tea can on the middle row seat. Based on his narcotics training and experience, the trooper suspected that the can was a drug hide.

2. Pereyra agreed to speak with the officer outside the defendant *in rem*. They discussed Pereyra's travel itinerary. Pereyra repeated that he was driving to a McDonald's restaurant in Windham, and intended to shop at the Walmart in Salem, afterwards. Pereyra explained, untruthfully, that all the McDonald's restaurants in Lawrence had already closed – it was 10 pm. Asked about the Arizona can, Pereyra replied that it must belong to the registered owner of the vehicle, Frastichelys Rodriguez.

3. The trooper told Pereyra that he suspected that he was trafficking narcotics, and asked if he would consent to a search of the vehicle. Pereyra signed a written consent form, allowing a search the defendant *in rem*.

4. During the search of the vehicle, the trooper opened the Arizona can and saw a significant amount of heroin/fentanyl residue in the bottom. The trooper also found a large amount of United States currency inside the center console, and two bags containing several smaller packages. He found several half-fingers of suspected fentanyl or heroin under the driver's seat, along with a small bag of crack cocaine.

5. The trooper arrested Pereyra. During a search of his person, the trooper found a small bag of crack cocaine in Pereyra's front pocket. Pereyra said that he thought it was a piece of a candy cane. Pereyra was processed at the Windham Police Department, and released on bail.

6. Subsequent laboratory analysis found that the drugs seized from Pereyra and the defendant *in rem* contained 49.87 grams of fentanyl and 1.449 grams of crack cocaine. The currency seized from the center console of the defendant *in rem* totaled \$7,556.00.

7. On January 25, 2019, a Salem Police officer stopped Pereyra while he was driving the defendant *in rem* without any lights on. The officer arrested Pereyra for driving without a valid license. During a search incident to arrest, the officer found a small clear plastic bag with brown powder, and \$4,516.00 in U.S. Currency on Pereyra's person. Pereyra could not account for why he carrying that much money.

8. The officer seized the defendant *in rem* and applied for a search warrant. While executing the search warrant, the officer discovered a sophisticated after-market hide. Inside the hide, he found two clear plastic bags of fentanyl.

9. Pereyra waived his Miranda Rights and told the officer that he was transporting narcotics from Massachusetts to distribute in New Hampshire. He admitted that the currency he had with him was the proceeds of drug deals. He told the officer that there was crack cocaine hidden in the hollowed out center of a lint roller inside the glove box.

10. Subsequent laboratory analysis confirmed that the drugs seized from the defendant *in rem* contained 4.68 grams of crack cocaine, 3.51 grams of powder cocaine, and 57.1 grams of fentanyl.

11. On March 20, 2019, a federal grand jury indicted Pereyra, and charged him with two counts of possession with intent to distribute controlled substances, specifically, cocaine, cocaine base and fentanyl, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B)(vi).

CLAIM FOR FORFEITURE
21 U.S.C. § 881(a)(4)

12. The allegations contained in paragraphs 1 through 11 of this Verified Complaint for Forfeiture *in Rem* are incorporated by reference.

13. Title 21, United States Code, Section 881(a)(4) subjects to forfeiture “all conveyances, including . . . vehicles . . . which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of” controlled substances.

14. The defendant *in rem*, One Gray 2011 Ford Explorer, MA Reg. 16F810, VIN 1FMHK8D89BGA13556, registered to Frastichelys Rodriguez, is a conveyance which was used, or intended for use, to transport, and in any manner to facilitate the transportation, sale, receipt, possession, and concealment of controlled substances, and is therefore liable to condemnation and forfeiture to the United States for its use, in accordance with 21 U.S.C. § 881(a)(4).

Therefore, the United States requests that:

- (a) the Clerk of Court issue a Warrant of Arrest *in Rem*, in the form submitted with this Verified Complaint, to the United States Marshal for the District of New Hampshire, commanding him to arrest the defendant *in rem*;
- (b) this matter be scheduled for a jury trial;
- (c) judgment be entered against the defendant *in rem*;
- (d) the defendant *in rem* be disposed of according to law; and

(e) this Court grant the United States its costs and whatever other relief to which it may be entitled.

Respectfully submitted,

SCOTT W. MURRAY
United States Attorney

Dated: July 23, 2019

By: /s/ Robert J. Rabuck
Robert J. Rabuck
NH Bar # 2087
Assistant U.S. Attorney
53 Pleasant Street
Concord, New Hampshire
603-225-1552
rob.rabuck@usdoj.gov

VERIFICATION

I, Nicholas Turner, being duly sworn, depose and say that I am a Task Force Officer with the United States Department of Justice, Drug Enforcement Administration, and as such have responsibility for the within action, that I have read the contents of the foregoing Verified Complaint for Forfeiture *in rem* and know the contents therein, and that the same is true to the best of my knowledge, information and belief.

The sources of my information and the grounds of my belief are official records and files of the United States and the State of New Hampshire, and information obtained by me and other law enforcement officers during an investigation of alleged violations of the controlled substances laws of the State of New Hampshire and of the United States.

/s/ Nicholas Turner
Nicholas Turner

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

Subscribed and sworn to before me this 23rd day of July 2019.

/s/ Francine Doucette Conrad
Notary Public

My commission expires: March 27, 2024.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS		DEFENDANTS																													
<p>(b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p>		<p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p>																													
<p>(c) Attorneys (Firm Name, Address, and Telephone Number)</p>		<p>Attorneys <i>(If Known)</i></p>																													
II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i>		III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i>																													
<p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>		<table border="0"> <tr> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td colspan="2">Citizen of This State</td> <td colspan="2">Incorporated or Principal Place of Business In This State</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> 2</td> <td colspan="2"><input type="checkbox"/> 2</td> </tr> <tr> <td colspan="2">Citizen of Another State</td> <td colspan="2">Incorporated and Principal Place of Business In Another State</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> 3</td> <td colspan="2"><input type="checkbox"/> 3</td> </tr> <tr> <td colspan="2">Citizen or Subject of a Foreign Country</td> <td colspan="2">Foreign Nation</td> </tr> </table>		PTF	DEF	PTF	DEF	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of This State		Incorporated or Principal Place of Business In This State		<input type="checkbox"/> 2		<input type="checkbox"/> 2		Citizen of Another State		Incorporated and Principal Place of Business In Another State		<input type="checkbox"/> 3		<input type="checkbox"/> 3		Citizen or Subject of a Foreign Country		Foreign Nation	
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IV. NATURE OF SUIT <i>(Place an "X" in One Box Only)</i>																															
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY																												
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157																											
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<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))																											
VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing <i>(Do not cite jurisdictional statutes unless diversity)</i> :																														
VII. REQUESTED IN COMPLAINT: VIII. RELATED CASE(S) IF ANY		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION <small>UNDER RULE 23, F.R.Cv.P.</small>		DEMAND \$ <small>CHECK YES only if demanded in complaint:</small> JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No																											
<small>(See instructions):</small> JUDGE _____		DOCKET NUMBER _____																													
DATE _____		SIGNATURE OF ATTORNEY OF RECORD																													

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the six boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States of America,)
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 Plaintiff,)
)
 v.) Civil No.)
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 One Gray 2011 Ford Explorer, MA Reg. 16F810,)
 VIN 1FMHK8D89BGA13556, registered to)
 Frastichelys Rodriguez,)
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 Defendant *in rem.*)
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**SUMMONS AND WARRANT OF ARREST *IN REM*
FOR ISSUANCE BY THE CLERK OF COURT FOR PROPERTY
WITHIN THE UNITED STATES' POSSESSION, CUSTODY OR CONTROL
PURSUANT TO SUPPLEMENTAL RULE G(3)(b)(i)**

To the United States Marshal or any duly authorized Federal Law Enforcement Officer for the District of New Hampshire:

Pursuant to Rule G(3)(b)(i) of the Supplemental Rules for Certain Admiralty and Maritime Claims, a Verified Complaint for Forfeiture *in rem* has been filed on July 23, 2019, in the U.S. District Court for the District of New Hampshire, alleging that the following property is subject to forfeiture to the United States on the following grounds: One Gray 2011 Ford Explorer, MA Reg. 16F810, VIN 1FMHK8D89BGA13556, registered to Frastichelys Rodriguez, is a conveyance which was used, or intended for use, to transport, and in any manner to facilitate the transportation, sale, receipt, possession, and concealment of controlled substances., in violation of Title II of the Controlled Substances Act, 21 U.S.C. §§ 801, et seq., and therefore liable to condemnation and forfeiture to the United States pursuant to 21 U.S.C. § 881(a)(4).

YOU ARE, THEREFORE, COMMANDED to seize the captioned defendant *in rem* item of personal property, and use discretion and whatever means appropriate to protect and maintain the property pending the outcome of this action;

IT IS FURTHER ORDERED that the United States Marshal shall maintain custody of the defendant *in rem* item of personal property until further order of this Court, and shall use his discretion and whatever means appropriate to protect and maintain said defendant *in rem*;

IT IS FURTHER ORDERED that the United States shall serve upon all potential claimants to the defendant *in rem*, a copy of this Summons and Warrant of Arrest in Rem, and the Verified Complaint for Forfeiture in Rem, in a manner consistent with the principles of service of process in an action in rem under Supplemental Rule G and other Supplemental Rules for Certain Admiralty and Maritime Claims and Title 18, United States Code, Section 983(a);

IT IS FURTHER ORDERED that a return of this Summons and Warrant of Arrest in Rem shall be promptly made to the Court, identifying the individuals upon whom copies were served and the manner employed; and

IT IS FURTHER ORDERED that all persons claiming an interest in or right against the defendants *in rem* shall file their Verified Claim within thirty-five (35) days after the date on which they were sent the Notice of Complaint or no later than sixty (60) days after the first day of publication on an official internet government forfeiture site, whichever is earlier, or within such additional time as the Court may allow, pursuant to Title 18, United States Code, Section 983(a)(4) and Rule G(4)(b)(ii)(B) of the Supplemental Rules for Certain Admiralty and Maritime Claims, and shall serve and file their Answer to the Complaint within twenty-one (21) days after the filing of their Verified Claims, pursuant to Rule G(4)(b)(ii)(C) of the Supplemental Rules for Certain Admiralty and Maritime Claims, with the Office of the Clerk, United States District

Court for the District of New Hampshire, with a copy sent to Assistant United States Attorney Robert J. Rabuck, United States Attorney's Office, District of New Hampshire, James Cleveland Federal Building, 53 Pleasant Street, Concord, NH 03301.

Dated:

Daniel J. Lynch, Clerk of Court